No. ~~863~~ 93

In the Supreme Court of the United States

OCTOBER TERM, 1940

THE UNITED STATES OF AMERICA, PETITIONER

v.

HARRY S. EMORY, ST. JAMES DISTILLERY, INC., AND ST. JAMES DISTILLERY

PETITION FOR A WRIT OF CERTIORARI TO THE SPRINGFIELD COURT OF APPEALS OF THE STATE OF MISSOURI

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PETITION FOR A WRIT OF CERTIORARI TO THE SPRINGFIELD COURT OF APPEALS OF THE STATE OF MISSOURI

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Springfield Court of Appeals affirming a judgment of the Circuit Court of Phelps County, Missouri, which granted priority to certain wage claims over the claims of the United States.

OPINIONS BELOW

The opinion of the Springfield Court of Appeals (R. 30–40) and its opinion on rehearing (R. 49–52) are reported in 143 S. W. (2d) 318.

JURISDICTION

The judgment of the Springfield Court of Appeals was entered August 22, 1940 (R. 29–30). A motion for rehearing was overruled on September 18, 1940 (R. 49). A petition for a writ of certiorari to the Supreme Court of Missouri was denied December 3, 1940[1] (R. 52). The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925, on the ground that the decision below denied a title, right, privilege, or immunity claimed by the United States under Section 3466 of the Revised Statutes of the United States. The cases relied upon to sustain the jurisdiction of this Court are *United States* v. *Knott*, 298 U. S. 544, and *United States* v. *Summerlin*, 310 U. S. 414.

The court below held that in a state receivership action a debt due the United States was not entitled to priority over wage claims whose priority was established by Missouri statute. The United States contends that Section 3466 of the Revised

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[1] The granting of a writ of certiorari by the Supreme Court of Missouri to review a judgment of a court of appeals is discretionary. It was believed necessary, however, to invoke that discretion as a condition precedent to making application to this Court for a writ of certiorari, and, of course, the time within which the present petition is to be filed commenced to run on the date of the denial of the petition by the Supreme Court of Missouri, December 3, 1940. *American Ry. Express Co.* v. *Levee*, 263 U. S. 19, 20–21.

Statutes confers upon it a priority which may not be defeated by state statute.

The petitioner raised this federal question before the Circuit Court of Phelps County (R. 2–3, 6, 16–17, 25–26); on assignment of errors on appeal to the Springfield Court of Appeals (R. 28); on a motion for rehearing (R. 41); and in its petition for a writ of certiorari to the Supreme Court of Missouri. The Circuit Court of Phelps County and the Springfield Court of Appeals each passed upon the federal question adversely to the contention of the petitioner (R. 2–3, 6–7, 34–40, 49–52). The Supreme Court of Missouri declined to entertain the question (R. 52).

The question presented is one of substance, as is more fully developed under the reasons for granting the writ, *infra*, pp. 6–10, and conflicts with the decision of the Court of Appeals of New York in *Matter of Kupshire Coats, Inc.*, 272 N. Y. 221, and that of the United States District Court for the Northern District of Georgia in *Piedmont Corporation* v. *Gainesville & N. W. R. Co.*, 30 F. (2d) 525.

QUESTION PRESENTED

Whether, in an equity receivership proceeding in a state court, wage claims, afforded priority in payment by state statute, take precedence in payment over a debt due the United States, the prior payment of which is directed by Section 3466 of the Revised Statutes.

STATUTES INVOLVED

The applicable portions of the statutes involved are set forth in the Appendix, *infra*, pp. 12–15.

STATEMENT

The instant case was tried upon a stipulation of facts (R. 23X24), the material parts of which are as follows:

The St. James Distillery became hopelessly insolvent on or before August 1936. On August 27, 1936, a petition was filed asking that a receiver be appointed to liquidate their assets, and on September 9, 1936, W. D. Jones was duly appointed receiver. The assets which came into the hands of the receiver amounted to the sum of $1,000. After payment of certain expenses of the receivership, there remained for distribution the sum of about $678.00.

Among the claims filed with the receiver were those of approximately 12 individuals totalling about $900.00. These claimants had performed common labor for the insolvent corporations and claimed preference in payment under the provisions of Section 1168 of the Revised Statutes of Missouri, which granted priority in payment to labor claims where the individual amount did not exceed $100.00.

On September 23, 1935, the St. James Distillery had executed a note in the amount of $7,481.78, made payable to the Industrial Bank and Trust

Company of St. Louis. The St. James Distillery defaulted in payments, and on July 14, 1936, the note was indorsed and delivered to the Federal Housing Administrator, acting for and on behalf of the United States, and the United States, under its contract of insurance, paid the Industrial Bank and Trust Company the sum of $5,988.88. The United States filed a claim with the receiver for payment of this amount ($5,988.88) with interest thereon from July 14, 1936. Priority was claimed under the provisions of Section 3466 of the Revised Statutes.

The Circuit Court of Phelps County denied the claim of the United States to priority, allowed it as a general claim only, and held that the labor claims were entitled to preference in payment by virtue of the Missouri statutes (R. 2–3, 6–7). Appeal was taken by the United States to the Supreme Court of Missouri, and was by that court transferred to the Springfield Court of Appeals (R. 4). On appeal, the Springfield Court of Appeals affirmed, holding that while the Circuit Court of Phelps County had committed error in failing to hold that the United States was a preferred creditor, such error was harmless inasmuch as the labor claims which took precedence over the claim of the United States more than absorbed the assets remaining (R. 30–40). A rehearing was denied (R. 49–52), and a petition for a writ of certiorari was denied by the Supreme Court of Missouri on December 3, 1940 (R. 52).

SPECIFICATION OF ERRORS TO BE URGED

The Springfield Court of Appeals of Missouri erred:

1. In holding that in a state insolvency proceeding labor claims are entitled to priority over a debt due the United States.

2. In holding that wage claims entitled to priority under Section 64a of the National Bankruptcy Act are entitled to the same priority in nonbankruptcy proceedings notwithstanding the provisions of Section 3466 of the Revised Statutes.

3. In holding that R. S., Section 3466 should be construed so as to permit prior payment of labor claims.

4. In holding that a state statute providing for priority of payment of wage claims in a state insolvency proceeding is not in conflict with R. S., Section 3466.

5. In failing to hold that state statutes providing for priority of payment are wholly inapplicable to a claim of the United States under R. S., Section 3466.

6. In failing to hold that the United States was entitled to priority in payment.

7. In affirming the judgment of the Circuit Court of Phelps County.

REASONS FOR GRANTING THE WRIT AND FOR REVERSING THE JUDGMENT OF THE COURT BELOW

The court below held, correctly, that claims of the United States acquired under the National

Housing Act prior to the appointment of a receiver are entitled to such priority as is accorded other claims of the United States under Revised Statutes, Section 3466.[5] It further held, however, that all claims of the United States are subordinate to those of wage earners. The court expressly recognized that the states are without power to establish a priority in conflict with that prescribed by Section 3466 of the Revised Statutes (*cf. Field* v. *United States*, 9 Pet. 182, 201; *United States* v. *Oklahoma*, 261 U. S. 253, 260; *Spokane County* v. *United States*, 279 U. S. 80, 90). But it concluded that Revised Statutes, Section 3466, should be applied in nonbankruptcy proceedings in conformity with the policy embodied in Section 64a of the Bankruptcy Act, which gives a limited priority to wage claims over those of the United States, and that, subject to the limitations as to time and amount prescribed by the Bankruptcy Act, the priority accorded wage claims by the Missouri statute is valid.

1. The decision below, as the court recognized (R. 50), is in conflict with the decision of the Court

[5] The decision of the court below in this aspect is in accord with the uniform ruling of other courts. *In re Dickson's Estate*, 197 Wash. 145; *Wagner* v. *McDonald*, 96 F. (2d) 273 (C. C. A. 8th); *Aronson* v. *Federal Housing Administrator*, 113 F. (2d) 743 (App. D. C.); *cf. In re Hansen Bakeries, Inc.*, 103 F. (2d) 665, 666 (C. C. A. 3d); *In re Miller*, 105 F. (2d) 926, 927-928 (C. C. A. 2d); *In re Stamford Auto Supply Co.*, 25 F. Supp. 530, 531 (N. D. Tex.)

of Appeals of New York in *Matter of Kupshire Coats, Inc.*, 272 N. Y. 221. The Court of Appeals of New York held that the Bankruptcy Act was self-contained, and that Section 64a did not attempt or purport to modify R. S., Section 3466. It accordingly held that the claims of the United States were entitled to payment ahead of labor claims.[1]

Under Section 64a of the Bankruptcy Act, wage claims, not exceeding $600, earned within three months of the commencement of the bankruptcy proceedings are entitled to priority over unsecured claims of the United States and the states for taxes; non-lien tax claims of the United States and the states are on a parity; and the latter are entitled to priority over unsecured claims of the United States other than for taxes. In all other insolvency proceedings, however, it has heretofore been the settled rule that, under R. S., Section 3466 claims of the United States, whether for taxes or other debts owing to the Government, are entitled to priority over unsecured claims of wage earners and the states. *Spokane County* v. *United States*, 279 U. S. 80; *Wagner* v. *McDonald*, 96 F. (2d) 273 (C. C. A. 8th); *Korman* v. *Federal Housing Administrator*, 113 F. (2d) 743 (App. D. C.); *Piedmont Corporation* v. *Gainesville & N. W. R.*

[1] In *Piedmont Corp.* v. *Gainesville & N. W. R. Co.*, 30 F. (2d) 525, the District Court for the Northern District of Georgia, in a federal receivership action, reached the same conclusion.

Co., 30 F. (2d) 525 (N. D. Ga.); *Matter of Kupshire Coats, Inc.*, 272 N. Y. 221; see Rogge, *The Differences in the Priority of the United States in Bankruptcy and in Equity Receiverships*, 43 Harv. L. Rev. 251.[4] To be sure, only in the *Piedmont* and

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[4] The cases relied on by the court below for a different view are not even remotely in point. In *Bramwell* v. *U. S. Fidelity Co.*, 269 U. S. 483, 490, the court merely held that a resolution of the board of directors of an insolvent bank giving control and possession of the bank's assets to a state superintendent of banks for purposes of liquidation was "an act of bankruptcy" within the meaning of R. S., Sec. 3466, even though the bank was not subject to the Bankruptcy Act. *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236, merely held that Section 10 of the Act of March 21, 1918, 40 Stat. 451, 456, subjected the Director General of Railroads to the laws theretofore applicable to common carriers, including those regulating the order of payment of private debts in an insolvency proceeding. The court expressly recognized (*id.* 238–239) that, apart from Section 10, debts owing directly to the United States would otherwise be entitled to priority under R. S., Sec. 3466, even though the rule was then otherwise under the Bankruptcy Act. In *United States* v. *Guaranty Trust Co.*, 280 U. S. 478, 484–485, this Court held that R. S., Sec. 3466, was inapplicable to claims of the United States arising under Title II of the Transportation Act of 1920 which authorized loans to railroads and made specific provision for security. The court concluded that to grant priority to such claims would impair the credit of the railroads and thus defeat the purpose of the Transportation Act and that the express inclusion by Congress of the provision for security clearly manifested a purpose not to rely on the priority provided by R. S., Sec. 3466. As the court below itself expressly recognized, however, claims of the United States acquired under the National Housing Act are entitled to the same priority accorded other claims of the United States under R. S., Sec. 3466.

Kupshire cases, so far as we are aware, was any contention made that the scheme of priority established by the Bankruptcy Act modifies the right of priority reserved to the United States in non-bankruptcy proceedings under Revised Statutes, Section 3466. The absence of any such contention, however, undoubtedly reflects the general assumption that Section 64a of the Bankruptcy Act has no application outside of bankruptcy proceedings. See Rogge, *supra*.

The reasons for such assumption are obvious. Section 64a establishes the order of priority of payment of all claims in bankruptcy proceedings, the claims of the states and private individuals as well as those of the United States. Obviously, Section 64a was not intended to supersede entirely the priority provisions of state insolvency laws in non-bankruptcy proceedings, and it seems equally clear that Congress did not intend the provisions of Section 64a subordinating certain claims of the United States to wage and tax claims to be given effect apart from the other provisions of the section. Indeed, any effort to subordinate the claims of the United States in such manner in harmony with state insolvency statutes must lead to results so absurd as to forbid the conclusion that Congress intended the Bankruptcy Act to be given any such application.

Some state statutes give priority to state tax claims, wage claims being given a limited priority over other claims. See, e. g., Georgia Code Ann., secs. 67-1801, 67-1802, and

CONCLUSION

For the foregoing reasons, we respectfully submit that this petition for a writ of certiorari should be granted. We suggest further that the decision of the lower court may be so plainly erroneous as to warrant a reversal without argument.

FRANCIS BIDDLE,
Solicitor General.

FEBRUARY 1941.

92–5707. The subordination of claims of the United States, in contrast to the tax claims of the state, to wage claims under such a state insolvency statute would obviously defeat the purpose and policy reflected in the Bankruptcy Act.

A similar problem may arise under R. S., Sec. 3466, in cases where the state statute gives priority to state tax claims over private claims secured by specific liens. To give priority to claims for state taxes out of property subject to a specific lien would probably not be in conflict with R. S., Sec. 3466, since the priority granted by R. S., Sec. 3466 extends only to the property belonging to the debtor at the time of the insolvency proceedings. See *Spokane County* v. *United States*, *supra*, at 91; Blair, *The Priority of United States in Equity Receiverships*, 39 Harv. L. Rev. 1, 29–30. The priority granted to wage earners under Section 64a of the Bankruptcy Act, however, is based on considerations of policy and applies to property belonging to the debtor at the time of the commencement of the proceedings. To grant the states priority over the United States to the extent of wage claims, where the state tax claim has priority over wage claims, would therefore be in plain conflict with the policy reflected in the Bankruptcy Act.

APPENDIX

Section 3466 of the Revised Statutes (31 U. S. C., sec. 191):

> Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

Section 64 of the Bankruptcy Act, as amended (11 U. S. C., Supp. V, sec. 104):

> a. The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment, shall be (1) the actual and necessary costs and expenses of preserving the estate subsequent to filing the petition; the filing fees paid by creditors in involuntary cases; where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the cost and expense of one or more creditors, the rea-

sonable costs and expenses of such recovery; the costs and expenses of administration, including the trustee's expenses in opposing the bankrupt's discharge, the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases and to the bankrupt in voluntary and involuntary cases, as the court may allow; (2) wages, not to exceed $600 to each claimant, which have been earned within three months before the date of the commencement of the proceeding, due to workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; (3) where the confirmation of an arrangement or wage-earner plan or the bankrupt's discharge has been refused, revoked, or set aside upon the objection and through the efforts and at the cost and expense of one or more creditors, or, where through the efforts and at the cost and expense of one or more creditors, evidence shall have been adduced resulting in the conviction of any person of an offense under this title, the reasonable costs and expenses of such creditors in obtaining such refusal, revocation, or setting aside, or in adducing such evidence; (4) taxes legally due and owing by the bankrupt to the United States or any State or any subdivision thereof: *Provided*, That no order shall be made for the payment of a tax assessed against any property of the bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the court: *And*

provided further, That, in case any question arises as to the amount or legality of any taxes, such question shall be heard and determined by the court; and (5) debts owing to any person, including the United States, who by the laws of the United States in [So in original. Probably should read "is".] entitled to priority, and rent owing to a landlord who is entitled to priority by applicable State law: *Provided, however*, That such priority for rent to a landlord shall be restricted to the rent which is legally due and owing for the actual use and occupancy of the premises affected, and which accrued within three months before the date of bankruptcy.

b. Debts contracted while a discharge is in force or after the confirmation of an arrangement shall, in the event of a revocation of the discharge or setting aside of the confirmation, have priority and be paid in full in advance of the payment of the debts which were provable in the bankruptcy or arrangement proceeding, as the case may be.

Mo. Rev. Stats. (1929), Sec. 1168:

SEC. 1168. *Employes and laborers preferred creditors.*—Hereafter when the property of any company, corporation, firm or persons shall be seized upon by any process of any court of this state, or when their business shall be suspended by the action of creditors, or be put into the hands of a receiver or trustee, then in all such cases the debts owing to laborers or servants, which have accrued by reason of their labor or employment, to an amount not exceeding one hundred dollars to each employee, for work or labor performed within six months next preceding the seizure or transfer of such prop-

erty, shall be considered and treated as preferred debts, and such laborers or employes shall be preferred creditors, and shall be first paid in full; and if there be not sufficient to pay them in full, then the same shall be paid to them pro rata, after paying costs. Any such laborer or servant desiring to enforce his or her claim for wages under this article shall present a statement under oath showing the amount due after allowing all just credits and set-offs, the kind of work for which such wages are due, and when performed, to the officer, person or court charged with such property, within ten days after the seizure thereof on any execution or writ of attachment, or within thirty days after the same may have been placed in the hands of any receiver or trustee; and thereupon it shall be the duty of the person or court receiving such statement to pay the amount of such claim or claims to the person or persons entitled thereto, after first paying all costs occasioned by the seizure of such property, out of the proceeds of the sale of the property seized: *Provided,* That any person interested may contest any such claim or claims, or any part thereof, by filing exceptions thereto, supported by affidavit, with the officer having the custody of such property; and thereupon the claimant shall be required to reduce his claim to judgment before some court having jurisdiction thereof before any part thereof shall be paid.

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